

**STATEMENT BEFORE
HOUSE REGULATORY REFORM COMMITTEE**

**Michigan Should Adopt Model Direct Shipment Bill
In Response To Supreme Court Decision**

May 24, 2005

WineAmerica, a national winery trade association with 800 members in 48 states, appreciates the opportunity to present a statement at this hearing.

On May 16, the U.S. Supreme Court handed down a decision which found Michigan's direct shipment regime to be unconstitutional. To avoid violating the Commerce Clause, the Court made clear that states which permit in-state wineries to ship must also afford that same opportunity to out-of-state wineries.

Today, 27 states and the District of Columbia permit the interstate shipment of limited quantities of wine to consumers. Recently, Texas became the 27th State to authorize interstate shipment, following litigation which resulted in a finding that its direct shipment laws also were unconstitutional. The Texas law is based upon a model direct shipment bill developed by a wine industry task force of the National Conference of State Legislatures.

WineAmerica and other wine industry trade associations strongly support the model direct shipment bill. Among other things, the model bill requires wineries to obtain a shipper's permit from the state, submit to the jurisdiction of the state, file periodic sales reports, and to remit applicable sales and excise taxes. The legislation also provides for fines and other penalties for those who attempt to ship without a permit, and requires that all shipping containers be clearly marked: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY."

The Michigan Legislature has two options to conform its laws with the Supreme Court ruling, but only one of these options would be a just outcome.

Some, including the Michigan Beer and Wine Wholesalers Association, are urging the Legislature to repeal the direct shipment rights of in-state wineries. They contend that this will prevent minors' access and tax evasion, and will ensure that local retailers and wholesalers are not hurt by a flood of out-of-state wine. This would be the wrong choice for a host of reasons which will be discussed shortly.

The second option is to adopt the model direct shipment bill, and to open up the state to limited interstate wine shipping. This option would give Michigan the necessary tools to effectively regulate interstate wine shipments, and a needed source of tax receipts for the State Treasury—revenues that wineries, both in-state and out-of-state, will willingly pay.

This option would also avoid having to repeal the direct shipment rights of Michigan wineries—a right wineries and consumers in this State have exercised responsibly for years without incident.

Given that the mandatory three-tier system of distribution does not serve the interests of small wineries, states have recognized that local wineries must have an alternative market mechanism to build business and serve their customers. To facilitate this, many states extended shipment rights to local wineries and consumers. Indeed, today at least 40 states have intrastate shipment laws on the books.

It is important to recognize that, given wholesaler consolidation, Michigan wineries have had considerable problems attracting wholesalers. If this is news to anyone it is because wineries are generally reluctant to speak out for fear of reprisal, or of alienating potential business partners.

Thus, repealing the longstanding shipment rights of local wineries will only serve to reduce their economic viability, further limit their ability to serve customers, burden the industry's growth potential, and reduce the economic benefits to the State.

WineAmerica urges the State to think long and hard about taking such a draconian step. Michigan has 40 commercial wineries, which attract more than 600,000 visitors per year and contribute approximately \$75 million to the State's economy. The State is ranked 13th in overall production (most of which is grown in Michigan), and its wineries are producing distinctive, excellent wines. The industry is growing rapidly, and is considered one of the most hopeful sectors of agriculture in the State. Vineyard area has increased by 24% since 1997 alone. If growth continues at the present rate, Michigan will have 100 or more wineries within five to ten years.

Now, let us turn to the issue of underage access—the topic that seems to be getting the most attention in the Michigan debate over direct shipment. As was noted in the Supreme Court decision, “The States provide little evidence for their claim that purchasing wine over the Internet by minors is a problem. The 26 States now permitting direct shipments report no such problem, and the States can minimize any risk with less restrictive steps (than a ban), such as requiring an adult signature on delivery.”

The Supreme Court's conclusion was buttressed by a 2003 Federal Trade Commission report which reached a similar conclusion following interviews with ABC officials from a dozen states that permit the interstate shipment of wine.

While much has been made of stings involving minors, this is the reality: There are only a few cases nationwide of minors that have actually been convicted of attempting to purchase alcohol over the Internet. In contrast, Michigan alone prosecutes thousands of minors every year for trying to buy alcohol from retailers. It is also worth reiterating that Michigan has permitted intrastate shipment for many years without any perceptible underage access problem—a product that could intoxicate a minor as readily as wine from any other state.

Finally, there is no evidence from any of the states that have enacted interstate shipment laws to suggest that wholesalers or retailers have suffered any loss of business or economic harm as a result of these laws. To the contrary, some states, like Oregon, have chosen to allow retailers, as well as wineries, to engage in interstate shipment, and many have built important niches selling unique Oregon wines to consumers in many other states. In closing, it is also important to note that, of the states that have enacted interstate shipment laws, none reports being flooded with wines from any other state.